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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,

Case No.: 3:20-cr-00371-WHA

17 Plaintiff,

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

18 v.

19 ROBERT T. BROCKMAN,

20 Defendant.

21
22 With the agreement of the parties, the Court enters the following Protective Order:

23 On October 1, 2020, a federal grand jury in the Northern District of California returned an
24 Indictment charging the Defendant with: conspiracy to defraud the United States, in violation of 18
U.S.C. § 371; tax evasion, in violation of 26 U.S.C. § 7201; FBAR reporting violations, in violation of
25 31 U.S.C. §§ 5314 and 5322; wire fraud, in violation of 18 U.S.C. § 1343; money laundering, in
26 violation of 18 U.S.C. §§ 1956(a)(1)(A)(ii), (a)(1)(B)(i), and (a)(2)(B)(i); evidence tampering, in
27 violation of 18 U.S.C. § 1512(b)(2)(B); and destruction of evidence, in violation of 18 U.S.C.
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1 1512(c)(1). Having received a discovery request under Fed. R. Crim. P. 16, the United States will
 2 produce documents and other materials pertaining to the defendant and the charged offenses to defense
 3 counsel. The discovery to be provided includes documents or other materials falling into one or more of
 4 the following categories (collectively, “Protected Information”):

- 5 1. Personal Identifying Information of individuals (other than his or her name), including the
 person’s date of birth, social security number, residence or business address, telephone
 numbers, email addresses, driver’s license number, professional license number, family
 members names, or criminal histories (“Personal Identifying Information”);
- 6 2. Financial information of individuals or businesses, including bank account numbers, credit or
 debit card numbers, account passwords, contact information, and taxpayer identification
 numbers (“Financial Information”);
- 7 3. Medical records or other patient information of individuals covered by the Health Insurance
 Portability and Accountability Act of 1996 (HIPAA) (“Medical Information”); and
- 8 4. Tax Return Information, as defined by Title 26, United States, Code, Section 6103(b)(1) and
 (2), pertaining to third parties.

9 To ensure that Protected Information is not subject to unauthorized disclosure or misuse,

10 **IT IS HEREBY ORDERED** that pursuant to Fed. R. Crim. P. 16(d)(1), the defendant, defense
 11 counsel of record, their investigators, assistants, and employees (collectively, “the defense team”) may
 12 review with the defendant all discovery material produced by the government, but shall not provide
 13 anyone other than the defense team with copies of, or permit anyone other than the defense team to
 14 make copies of, or have unsupervised access to, any discovery material produced by the government that
 15 contains Protected Information, unless the Personal Identifying Information, Financial Information,
 16 and/or Medical Information has first been **entirely redacted** from the discovery materials. The
 17 government and defense counsel are ordered to work together to ensure that these materials are
 18 protected, but that the defendant has as much access to the materials as can be provided consistent with
 19 this Court’s order. Discovery material that clearly pertains to the defendant and does not contain
 20 Protected Information regarding any other person (*e.g.*, defendant’s own bank records, telephone
 21 records, and business records) may be provided to the defendant unredacted.

1 Defense counsel may also provide unredacted copies of Protected Information to any experts or
2 consultants retained to assist with the preparation of the defense in the captioned case. The defendant,
3 all members of the defense team, and any experts or consultants who receive discovery under this Order
4 shall be provided a copy of this Order along with those materials and shall initial and date the order
5 reflecting their agreement to be bound by it.

6 The materials provided pursuant to this protective order may only be used for the specific
7 purpose of preparing or presenting a defense in this matter, unless specifically authorized by the Court.

8 This Order shall also apply to any copies made of any materials covered by this Order.

9 **IT IS FURTHER ORDERED** that discovery material provided by the government that includes
10 Tax Return Information of third parties, as defined by 26 U.S.C. 6103(b)(1) and (2), is provided
11 pursuant 26 U.S.C. 6103(h)(4) and: 1) pertains to the defendant; 2) is related to items contained within
12 the defendant's income tax returns; 3) is relevant to a transaction involving the defendant and a third
13 party taxpayer; or 4) is otherwise required to be disclosed under 18 U.S.C. § 3500. The defendant, all
14 members of the defense team, and any experts or consultants who receive discovery under this Order
15 shall maintain the confidentiality of all Tax Return Information provided by the government in
16 discovery in accordance with 26 U.S.C. 6103(a) and this Order, other than material that clearly pertains
17 to the defendant and does not contain Tax Return Information regarding any other person.

18 **IT IS FURTHER ORDERED** that neither the defendant nor any member of the defense team
19 shall provide copies of any discovery material produced by the government—whether or not the material
20 constitutes or contains Protected Information within the meaning of this Order—to any third party (*i.e.*,
21 any person who is not a member of the defense team) or make any public disclosure of the same, other
22 than in a court filing, without the government's express written permission or further order of this Court.
23 No provision of this Order shall prevent defense counsel from discussing, and showing, discovery
24 provided by the government with potential trial witnesses and their counsel, as necessary to prepare for
25 trial. If a party files a pleading that references or contains or attaches Protected Information subject to
26 this Order, that filing must comply with Fed. R. Crim. P. 49.1. If a party files a pleading that references
27 or contains or attaches Medical Information or Tax Return Information regarding any person other than
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1 defendant, that pleading, reference, or attachment must be made under seal.¹

2 **IT IS FURTHER ORDERED** that defense counsel shall return materials subject to this
3 Protective Order (including any copies) to the United States within 14 days after whichever event occurs
4 last in time: dismissal of all charges against the defendant; defendant's acquittal; defendant's sentencing;
5 or the conclusion of any direct appeal. After the United States receives documents and materials subject
6 to this Order, it shall maintain those documents and materials until the period for filing a motion under
7 28 U.S.C. § 2255 has expired. After the statutory period for filing a motion under 28 U.S.C. § 2255 has
8 expired, the United States is free to destroy documents and materials subject to this Order. If defendant
9 is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the United States will provide
10 counsel with the documents and materials subject to this Protective Order under the terms of this Order.
11 Defendant's attorney in any motion under 28 U.S.C. § 2255 shall return the documents and materials
12 subject to this Protective Order within 14 days after the district court's ruling on the motion or 14 days
13 after the conclusion of any direct appeal of the district court's order denying the motion, whichever is
14 later. This stipulation is without prejudice to either party applying to the Court to modify the terms of
15 any protective order. This Court shall retain jurisdiction to modify this Order upon motion of either
16 party even after the conclusion of district court proceedings in this case.

17 The undersigned Attorney for the United States certifies that he has obtained approval from
18 counsel for the defendant to file this stipulation and proposed order.

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20 IT IS SO STIPULATED.

DAVID L. ANDERSON
United States Attorney

21
22 s/ Michael G. Pitman
23 COREY J. SMITH
Senior Litigation Counsel
24 MICHAEL G. PITMAN
Assistant United States Attorney

25 Attorneys for United States of America

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28 ¹ This Order authorizes such filings under seal and the parties are not required to seek additional
authorization from the Court to do so.

1 s/ Neal J. Stephens
2 NEAL J. STEPHENS
3 Counsel for Defendant ROBERT T. BROCKMAN

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5 IT IS SO ORDERED.

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7 Dated:

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WILLIAM ALSUP
United States District Judge